

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

76-7146

UNITED STATES COURT OF APPEALS

FOR THE SECOND JUDICIAL CIRCUIT

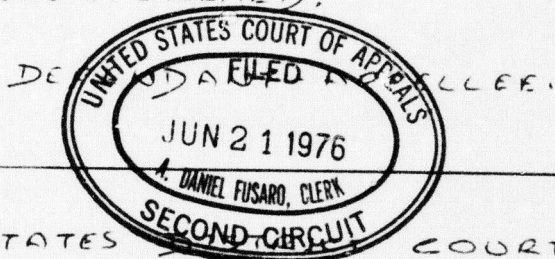
DOCKET NUMBER 76 - 7146

BISWANATH HALDER,

PLAINTIFF-APPELLANT.

v

QUOTRON SYSTEMS, INCORPORATED,



APPEAL FROM THE UNITED STATES COURT

FOR THE EASTERN DISTRICT OF NEW YORK

and appendix
BRIEF A FOR PLAINTIFF - APPELLANT

BISWANATH HALDER

APPELLANT PRO SE

173-17 65 AVENUE

FRESH MEADOWS, NY 11365

TABLE OF CONTENTS

TABLE OF CASES	iii
TABLE OF STATUTES AND RULES	x
ISSUES PRESENTED	i
STATEMENT OF FACTS	2
ARGUMENT	8
POINT I OPEN DISCLOSURE OF ALL POTENTIALLY RELEVANT INFORMATION IN THE ADVERSARY SYSTEM OF JUSTICE IS BOTH FUNDAMENTAL AND COMPREHENSIVE	11
POINT II ATTORNEYS' FEES ARE USUALLY AWARDED TO PRIVATE ATTORNEYS GENERAL WHO VINDICATE A POLICY THAT CONGRESS	

CONSIDERED OF THE HIGHEST
PRIORITY AND NOT TO A
CORPORATE DEFENDANT WHO IS
VIOLATING THE LAW OF THE LAND - 21

POINT III DISMISSAL OF THE
COMPLAINT FOR LACK OF
PROSECUTION THE DAY AFTER
DENYING THE PLAINTIFF'S
DISCOVERY MOTION IS NOTHING
BUT JUDICIAL USURPATION AND
OPPRESSION AND CAN NEVER BE
UPHELD WHERE JUSTICE IS JUSTLY
ADMINISTERED 29

CONCLUSION 38

TABLE OF CASES

1. ALABAMA V UNITED STATES, 304 F.2D 583,
586, 2A 5 1962, AFF'D PER CURIAM 1962,
371 U.S. 37, 83 S.Ct. 145, 9 L.ED. 2D 112. . . 15

2. ALEXANDER V GARDNER-DENVER COMPANY,
1974, 415 U.S. 36, 96 S.Ct. 1011, 39 L.ED.
2D 147. 10, 37

3. ALYESKA PIPELINE SERVICE COMPANY V
WILDERNESS SOCIETY, 1975, 421 U.S. 240,
95 S.Ct. 1612, 44 L.ED. 2D 141. 21, 22, 23

4. ATLANTIC GREYHOUND CORPORATION V
LAURITZEN, 182 F.2D 540, 2A 6 1950. . . . 19

5. BAKER V F L F INVESTMENT, 470 F.2D 778,
2A 2 1972, CERT. DEN. 1973, 411 U.S. 966,
93 S.Ct. 2147, 36 L.ED. 2D 686. 18

6. BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION V HAYDEN, 231
F.2D 595, 2A 9 1956. 19

7. BOOTH V PRINCE GEORGE'S COUNTY,

	MARYLAND, 66 F.R.D. 466, DC MD 1975.	18
8.	BOWE V COLGATE-PALMOLIVE COMPANY, 416 F.2d 711, CA 2 1969.	37
9.	BRADLEY V SCHOOL BOARD OF CITY OF RICHMOND, 1974, 416 U.S. 696, 94 S.Ct. 2006, 40 L.Ed. 2d 476.	25, 28
10.	BROWN V O'LEARY, 512 F.2d 485, CA 5 1975.	32
11.	BROWN V THOMPSON, 430 F.2d 1214, CA 5 1970.	32
12.	BURNS V THIOKOL CHEMICAL CORPORATION, 483 F.2d 300, CA 5 1975.	18, 19
13.	BUSH V UNITED STATES POSTAL SERVICE, 496 F.2d 42, CA 4 1974.	31, 32
14.	CARTER V BALTIMORE & O.R. COMPANY, 152 F.2d 129, CA DC 1945.	19
15.	CONNOLLY V PAPACHRISTID SHIPPING LIMITED, 504 F.2d 917, CA 5 1974.	31
16.	COUNCIL OF FEDERATED ORGANIZATIONS V MIZE, 339 F.2d 898, CA 5 1964.	30

17. DAVIS V OPERATION AMIGO, 378 F.2D
101, 2A 10 1967. 30
18. DURGIN V GRAHAM, 372 F.2D 130, 2A 5
1967. 31
19. DURHAM V FLORIDA EAST COAST RAILWAY
COMPANY, 385 F.2D 366, 2A 5 1967. 31
20. DYOTHERM CORPORATION V TURBO MACHINE
COMPANY, 392 F.2D 146, 2A 3 1966. 30
21. EVANS V SHERATON PARK MOTEL, 503 F.2D
177, 2A DC 1974. 27
22. F.D. RICH COMPANY V UNITED STATES
FOR USE OF INDUSTRIAL LUMBER COMPANY,
1974, 417 U.S. 116, 94 S.Ct. 2157, 40 L.Ed.2d 703. 23, 24
23. FLAKSA V LITTLE RIVER MARINE
CONSTRUCTION COMPANY, 389 F.2D 885,
2A 5 1965, CERT. DEN. 1968, 392 U.S. 928,
88 S.Ct. 2287, 20 L.Ed. 2d 1387. 29
24. FLEISCHMANN DISTILLING CORPORATION V
MAIER BREWING COMPANY, 1967, 386 U.S.
714, 87 S.Ct. 1404, 18 L.Ed. 2d 475. 22

25. GALPIN V PAGE, 1873, 85 U.S. (18 WALL) 350. . 34
26. GRIGGS V DUKE POWER COMPANY, 1971,
401 U.S. 424, 91 S. Ct. 809, 28 L. Ed. 2d 158. . 11, 12
27. HERCULES POWDER COMPANY V ROHM &
HAAS COMPANY, 3 F.R.D. 302, DC DE 1943. . 14
28. HICKMAN V TAYLOR, 1947, 329 U.S. 495,
57 S. Ct. 385, 91 L. Ed. 451. 13, 15, 17
29. HOLMBERG V ARMBRECHT, 1946, 327 U.S.
392, 66 S. Ct. 582, 90 L. Ed. 743. 23
30. HORMEL V HELVERING, 1961, 312 U.S. 552,
61 S. Ct. 719, 85 L. Ed. 1037. 36
31. HOVEY V ELLIOTT, 1897, 167 U.S. 409, 17
S. Ct. 841, 42 L. Ed. 215. 34, 35
32. JENKINS V UNITED GAS CORPORATION, 400.
F. 2d 28, CA 5 1968. 36
33. JOHNSON V GEORGIA HIGHWAY EXPRESS, 488.
F. 2d 716, CA 5 1974. 27
34. LA CHEMISE LACOSTE V ALLIGATOR COMPANY,
60 F.R.D. 164, DC DE 1973. 16
35. LINK V WABASH RAILROAD COMPANY, .

- 1962, 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734. 29,32
36. MCDONNELL DOUGLAS CORPORATION V GREEN,
1973, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668. 16,17
37. MEERER V RIZLEY, 324 F.2d 269, CA 10 1963. 30
38. MILLS V ELECTRIC AUTO-LITE COMPANY,
1970, 396 U.S. 375, 90 S.Ct. 616, 24 L.Ed.2d 593. 24,25
39. MONTECATINI EDISON S.P.A. V E. I. DU PONT
DE NEMOURS & COMPANY, 434 F.2d 70, CA
3 1970. 18
40. NAVARRO V CHIEF OF POLICE, DES MOINES,
IOWA, 523 F.2d 214, CA 8 1975. 30
41. NEWMANN V PICCIE PARK ENTERPRISES,
1968, 390 U.S. 400, 88 S.Ct. 964, 19 L.Ed.2d 1263. 25,27
42. NORTHCROSS V BOARD OF EDUCATION OF
MEMPHIS CITY SCHOOLS, 1973, 412 U.S. 427,
93 S.Ct. 2201, 37 L.Ed.2d 48. 25,27
43. PARHAM V SOUTHWESTERN BELL TELEPHONE
COMPANY, 433 F.2d 421, CA 8 1970. 27
44. POND V BRANTER AIRWAYS, 453 F.2d 367,
CA 5 1972. 32

45. REDFIELD V YSTALYFERA IRON COMPANY,
1884, 110 U.S. 174, 3 S.Ct. 570, 28 L.Ed. 109. 33
46. REIZAKIS V LOY, 490 F.2d 1132, CA 4 1974. 32
47. RICHMAN V GENERAL MOTORS CORPORATION,
437 F.2d 196, CA 1 1971. 30, 32
48. RODRIGUEZ V EAST TEXAS MOTOR FREIGHT,
505 F.2d 40, CA 5 1974. 15
49. SAYRE V ABRAHAM LINCOLN FEDERAL
SAVINGS & LOAN ASSOCIATION, 65 F.R.D.
379, ED PA 1974. 16
50. SCARVER V ALLEN, 457 F.2d 308, CA 7 1972. 30
51. SCHAEFFER V SAN DIEGO YELLOW CABS,
462 F.2d 1002, CA 9 1972. 27
52. SOCIETE INTERNATIONALE V ROGERS, 1958,
357 U.S. 197, 78 S.Ct. 1087, 2 L.Ed. 2d 1255. 35
53. SOUTHERN RAILWAY COMPANY V CAUHAM,
403 F.2d 119, CA 5 1968. 17, 19
54. SPRAGUE V TICONIC NATIONAL BANK, 1939,
307 U.S. 161, 59 S.Ct. 777, 83 L.Ed. 1184. 23, 24, 25
55. SUROWITZ V HILTON HOTELS CORPORATION,

	1966, 383 U.S. 363, 86 S.Ct. 845, 15 L.Ed. 807. . .	36
56.	TABATEHNICK V G D. SEARLE & COMPANY., 67 F.R.D. 49, DC NJ 1975.	16
57.	UNITED STATES V HAYES INTERNATIONAL CORPORATION, 456 F.2D 112, CA 5 1972. . . .	15
58.	UNITED STATES V INTERNATIONAL BUSINESS MACHINES CORPORATION, 66 F.R.D. 215, SD NY 1974.	16
59.	UNITED STATES V NIXON, 1974, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed. 2d 1039.	17,20
60.	US STEEL CORPORATION V UNITED STATES, 519 F.2D 359, CA 3 1975.	28
61.	UNIVERSAL OIL PRODUCTS COMPANY V ROOT REFINING COMPANY, 1946, 328 U.S. 575, 66 S.Ct. 1176, 90 L.Ed. 1447.	23
62.	VINDIGNI V MEYER, 441 F.2D 376, CA 2 1971 .	29

TABLE OF STATUTES AND RULES

8 USCA 1153(a)(3) 2

42 USCA 1981 6

42 USCA 20002 et seq. 3

RULE 1, F.R.CIV.P. 36

RULE 15(c), F.R.CIV.P. 4, 6

RULE 26, F.R.CIV.P. 4

RULE 26(b)(1), F.R.CIV.P. 16

RULE 30, F.R.CIV.P. 4

RULE 33(c), F.R.CIV.P. 5

RULE 37(a), F.R.CIV.P. 5

RULE 41(b), F.R.CIV.P. 7, 29

RULE 9(m), GENERAL RULES, ED OF NY . . 5

ISSUES PRESENTED

1. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING "COMPETENT EVIDENCE" TO THE PLAINTIFF - APPELLANT THROUGH DISCOVERY, IN ORDER FOR HIM TO ESTABLISH A PRIMA FACIE CASE OF EMPLOYMENT DISCRIMINATION.
2. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING ATTORNEY'S FEE TO THE DEFENDANT - APPELLEE, WHEN THE DEFENDANT IS VIOLATING THE LAW OF THE LAND.
3. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DISMISSING THE COMPLAINT FOR LACK OF PROSECUTION, WHEN THE PLAINTIFF - APPELLANT HAD BEEN PROSECUTING IT VIGOROUSLY.

STATEMENT OF FACTS

THE APPELLANT WAS BORN IN INDIA, OF INDIAN PARENTAGE. HE HOLDS A BACHELOR'S DEGREE IN ELECTRICAL ENGINEERING FROM THE UNIVERSITY OF CALCUTTA. HE IMMIGRATED TO THIS GREAT COUNTRY ON MAY 31, 1969.

PRIOR TO COMING TO THE UNITED STATES, HE HAD GAINED TWO YEARS OF EXPERIENCE IN COMPUTER SOFTWARE WITH TWO REPUTABLE COMPUTER MANUFACTURERS IN ENGLAND. HE WAS ADMITTED TO THIS COUNTRY AS AN ALIEN WHO IS A MEMBER OF A PROFESSION FOR WHICH THERE IS AN AVAILABLE MARKET FOR HIS PROFESSIONAL SERVICES. 8 USCA 1153 (2)(3).

EVER SINCE THE APPELLANT LANDED IN THE LAND OF OPPORTUNITY, HE HAS BEEN LOOKING FOR A JOB.

THE APPELLANT FILED CHARGES OF DISCRIMINATION WITH THE EQUAL EMPLOYMENT

OPPORTUNITY COMMISSION (EEOC) ON SEPTEMBER 6, 1971, CHARGING THE APPELLEE, QUOTRON SYSTEMS, INCORPORATED (QUOTRON), WITH DISCRIMINATION AGAINST HIM BECAUSE OF HIS NATIONAL ORIGIN. THE EEOC ISSUED A NO-CAUSE DETERMINATION ON JULY 31, 1973. THEREAFTER, THE APPELLANT REQUESTED AND RECEIVED A NOTICE OF RIGHT-TO-SUE QUOTRON ON AUGUST 3, 1974.

ON SEPTEMBER 25, 1974, THE APPELLANT COMMENCED THE INSTANT ACTION AGAINST THE APPELLEE BY FILING A COMPLAINT AT THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK. IN THE COMPLAINT THE APPELLANT CHARGED THAT THE APPELLEE DENIED HIM EQUAL EMPLOYMENT OPPORTUNITIES AS PROVIDED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED BY THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972, 42 USCA 20002 ET SEQ., BASED ON ITS FAILURE OR

REFUSAL TO HIRE HIM AS A PROGRAMMER-ANALYST BECAUSE OF HIS NATIONAL ORIGIN.

THE APPELLEE, THEN, BY ITS ATTORNEYS, DEPOSED THE APPELLANT, PURSUANT TO RULES 26 AND 30 OF THE F.R. CIV. P., AND FILED THE DEPOSITION WITH THE CLERK OF THE COURT ON FEBRUARY 14, 1975.

SUBSEQUENTLY, THE APPELLANT MADE A MOTION, PURSUANT TO RULE 15(2) OF THE F.R. CIV. P., FOR LEAVE TO FILE AN AMENDED COMPLAINT, RETURNABLE JANUARY 17, 1975, TO INCLUDE AND ENUMERATE NINE SPECIFIC DATES FROM 1969 TO 1974, WHEN HE WAS DENIED EMPLOYMENT BY QUOTRON AFTER APPLYING TO ITS OFFICES IN NEW YORK AND LOS ANGELES. THE SAID MOTION WAS GRANTED BY THE TRIAL COURT ON FEBRUARY 24, 1975.

IN THE INTERIM, ON FEBRUARY 4, 1975, THE APPELLANT SERVED A SET OF NINE

INTERROGATORIES, PURSUANT TO RULE 33(a) OF THE F.R.CIV.P., ON THE COUNSEL FOR THE APPELLEE. THE APPELLEE ANSWERED NOS. 1, 2, 3, 7 & 8, AND OBJECTED TO NOS. 4, 5, 6 & 9 ON THE GROUNDS OF BURDENSOMENESS AND OPPRESSIVENESS.

ON APRIL 7, 1975, THE APPELLANT MADE A MOTION, PURSUANT TO RULE 33(b) OF THE F.R.CIV.P., TO COMPEL THE APPELLEE TO ANSWER INTERROGATORIES 4, 5, 6 & 9, ON THE GROUND THAT FAILURE TO ANSWER THEM WERE WITHOUT SUBSTANTIAL JUSTIFICATION. THE SAID MOTION WAS DENIED BY THE TRIAL COURT ON JUNE 13, 1975.

IMMEDIATELY THEREAFTER, THE APPELLANT MADE A MOTION, PURSUANT TO RULE 9(w) OF THE GENERAL RULES FOR THE EASTERN DISTRICT OF NEW YORK, FOR AN ORDER GRANTING HIM LEAVE TO REARGUE HIS MOTION TO COMPEL THE APPELLEE TO ANSWER ALL THE INTERROGA-

TORIES ON THE GROUND THAT OPEN DISCLOSURE OF ALL POTENTIALLY RELEVANT INFORMATION IS THE KEYNOTE OF DISCOVERY PROVISIONS OF THE FEDERAL RULES OF CIVIL PROCEDURE.

THE APPELLANT, IN THE INTERIM, ON JUNE 3, 1975, MADE A MOTION, PURSUANT TO RULE 15 (O) OF THE F.R.CIV.P., TO AMEND THE COMPLAINT FOR THE SECOND TIME TO INCLUDE A CAUSE OF ACTION UNDER THE CIVIL RIGHTS ACT OF 1866, AS AMENDED BY THE ENFORCEMENT ACT OF 1870, 42 USC 1981, AS WELL AS TO ADD COLOR, RELIGION, AND ALIENAGE AS GROUNDS OF DISCRIMINATION. UPON THE CONSENT OF THE APPELLEE, THE TRIAL COURT, ON JUNE 23, 1975, GRANTED THE APPELLANT'S MOTION TO AMEND THE COMPLAINT.

ON FEBRUARY 9, 1976, THE TRIAL COURT DENIED THE APPELLANT'S MOTION TO COMPEL THE APPELLEE TO ANSWER CERTAIN INTERROGATORIES.

THE FOLLOWING DAY THE TRIAL COURT
DISMISSED THE COMPLAINT, PURSUANT TO RULE
41(b) OF THE F.R.CIV.D., ON THE GROUND THAT
THE APPELLANT FAILED TO PROCEED TO TRIAL
BECAUSE OF INCOMPLETION OF PRE-TRIAL DISCOVERY.

ARGUMENT

THE APPELLANT WAS WORKING IN THE COMPUTER INDUSTRY IN ENGLAND BEFORE HE IMMIGRATED TO THE LAND OF OPPORTUNITY. AT THAT TIME HE SAW MANY AMERICAN CORPORATIONS GOING TO ENGLAND TO RECRUIT ENGINEERS AND PROGRAMMERS. ONE SUCH CORPORATION WAS THE APPELLEE — QUOTRON (THE NAME HAS BEEN CHANGED FROM SCANTLIN ELECTRONICS TO QUOTRON SYSTEMS IN 1973. SEE AMENDED COMPLAINT PAGE 2, PARA 5, AND ALSO TRIAL TRANSCRIPT PAGE 32). BARELY FOUR MONTHS BEFORE THE APPELLANT CAME TO THE UNITED STATES, THE APPELLEE WENT ACROSS THE ATLANTIC TO RECRUIT ELECTRONIC ENGINEERS AND SYSTEMS PROGRAMMERS. THE TIME THE APPELLANT WAS EARNING £1,600 IN ENGLAND, THE APPELLEE LURED HIM TO THE LAND OF OPPORTUNITY WITH A SALARY OF £5,000 (\$12,000) TO £10,000 (\$24,000) (Exh: 6.15 A & B).

SINCE THE APPELLANT IMMIGRATED TO THE UNITED STATES, HE CAME ACROSS DOZENS OF ADVERTISEMENTS BY THE APPELLEE IN PUBLICATIONS FOR PROGRAMMERS AND ANALYSTS. HE RESPONDED TO SOME OF THOSE ADVERTISEMENTS. AND ALTHOUGH HIS BACKGROUND — TRAINING IN ELECTRICAL ENGINEERING WITH SPECIALIZATION IN LINE COMMUNICATIONS AND ELECTRONICS, AND STRONG ASSEMBLY LANGUAGE EXPERIENCE WITH MINI-COMPUTERS — PERFECTLY MATCHED THE APPELLEE'S REQUIREMENTS (SEE TRIAL TRANSCRIPT PAGE 36), HE HAS NEVER BEEN CONSIDERED FOR A JOB (AMENDED COMPLAINT PAGES 2, 3 & 4, PARA 6).

INDEED, THE APPELLEE TACITLY ADMITTED THAT NOT ALL THE SOFTWARE PROFESSIONALS EMPLOYED BY IT ARE MORE QUALIFIED THAN THAT OF THE APPELLANT :

"IT IS CONCEIVABLE THAT THE EDUCATIONAL INFORMATION SOUGHT IS NOT PRESENTLY WITHIN THE INDIVIDUAL FILES MAINTAINED

BY THE DEFENDANT FOR ITS EMPLOYEES"

DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION
TO PLAINTIFF'S MOTION TO COMPEL ANSWERS TO
INTERROGATORIES DATED 04-15-1975, PAGE 2.

IN THESE CIRCUMSTANCES IT IS IMPERATIVE
THAT THE APPELLANT BE GIVEN A FULL AND FAIR
OPPORTUNITY TO AVAIL OF HIS GUARANTEED RIGHT
IN A COURT OF LAW, NOT ONLY TO REDRESS HIS
OWN INJURY, BUT ALSO TO VINDICATE "THE
IMPORTANT CONGRESSIONAL POLICY AGAINST
DISCRIMINATORY EMPLOYMENT PRACTICES." ALEXANDER
V GARDNER-DENVER COMPANY. 1974, 415 U.S. 36, 45,
94 S.Ct. 1011, 1015.

POINT I OPEN DISCLOSURE OF ALL POTENTIALLY
RELEVANT INFORMATION IN THE
ADVERSARY SYSTEM OF JUSTICE IS
BOTH FUNDAMENTAL AND COMPREHENSIVE

CONGRESS ENACTED TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 "TO ACHIEVE EQUALITY OF EMPLOYMENT OPPORTUNITIES AND REMOVE BARRIERS THAT HAVE OPERATED IN THE PAST TO FAVOR AN IDENTIFIABLE GROUP OF WHITE [APPLICANTS] OVER OTHER [APPLICANTS FOR EMPLOYMENT]." *CRIGGS V DUKE POWER COMPANY*, 1971, 401 U.S. 424, 429-30, 91 S.Ct. 849, 853.

HOWEVER, "THE ACT DOES NOT COMMAND THAT ANY PERSON BE HIRED SIMPLY BECAUSE HE . . . IS A MEMBER OF A MINORITY GROUP." *Id.*, 401 U.S. at 430-1, 91 S.Ct. at 853.

"INDEED, THE VERY PURPOSE OF TITLE VII IS TO PROMOTE HIRING ON THE BASIS OF JOB QUALIFICATIONS, RATHER THAN ON THE

BASIS OF [COLOR, OR RELIGION, OR NATIONAL ORIGIN]." 18., 401 U.S. at 434, 91 S.Ct. at 855.

THE APPELLANT HAS BEEN SEEKING EMPLOYMENT WITH THE APPELLEE AS A PROGRAMMER ANALYST EVER SINCE HE IMMIGRATED TO THE UNITED STATES. AND ALTHOUGH HIS ACADEMIC TRAINING AND PROFESSIONAL EXPERIENCE PERFECTLY MATCHED THE APPELLEE'S JOB REQUIREMENTS OVER THE PAST SEVEN YEARS, HE HAS NEVER BEEN CONSIDERED FOR A JOB.

THE APPELLEE CONTENTS, HOWEVER, THAT THE PROGRAMMERS AND ANALYSTS HIRED DURING THAT PERIOD OF TIME POSSESSED QUALIFICATIONS SUPERIOR TO THOSE OF THE APPELLANT.

THE INTERROGATORIES PROPOUNDED BY THE APPELLANT PRIMARILY CALL FOR THE QUALIFICATIONS OF THE PROGRAMMERS AND ANALYSTS HIRED BY THE APPELLEE DURING THAT PERIOD.

THE APPELLEE OBJECTED TO THOSE INTERROGATORIES ON THE GROUNDS OF BURDENSOMENESS AND OPPRESSIVENESS. ANSWERS AND OBJECTIONS TO INTERROGATORIES, DATED MARCH 4, 1975. AND THE TRIAL COURT SUSTAINED THOSE OBJECTIONS ON THE GROUND THAT THE INFORMATION SOUGHT WOULD HAVE LIMITED PROBATIVE VALUE ON THE APPELLANT'S CASE. MEMORANDUM OF DECISION AND ORDER DATED JUNE 13, 1975.

IT IS WELL-ESTABLISHED THAT A LAWSUIT IS NOT A CONTEST IN CONCEALMENT, AND THAT THE DISCOVERY PROCESS WAS ESTABLISHED SO THAT "EITHER PARTY MAY COMPEL THE OTHER TO DISGORGE WHATEVER FACTS HE HAS IN HIS POSSESSION." HICKMAN V TAYLOR, 1947, 329 U.S. 495, 507. 67 S.Ct. 385, 392.

THE BROAD SCOPE OF DISCOVERY AS ARTICULATED IN THE TEXT IS ALSO REFLECTED IN AN OPINION BY JUDGE LEAHY SHORTLY

AFTER THE ADOPTION OF THE FEDERAL RULES OF CIVIL PROCEDURE :

"UNLESS IT IS PALPABLE THAT THE EVIDENCE SOUGHT CAN HAVE NO POSSIBLE BEARING UPON THE ISSUES, THE SPIRIT OF THE NEW RULES CALLS FOR EVERY RELEVANT FACT, HOWEVER REMOTE, TO BE BROUGHT OUT FOR THE INSPECTION NOT ONLY OF THE OPPOSING PARTY BUT FOR THE BENEFIT OF THE COURT WHICH IN DUE COURSE CAN ELIMINATE THOSE FACTS WHICH ARE NOT TO BE CONSIDERED IN DETERMINING THE ULTIMATE ISSUES." HERCULES POWDER COMPANY V ROHM & HAAS COMPANY, 3 F.R.D. 302, 304, DC DE 1943.

MOREOVER, THE SUPREME COURT MADE IT CLEAR THAT THE "DISCOVERY RULES ARE TO BE ACCORDED A BROAD AND LIBERAL TREATMENT," AND THAT "MUTUAL KNOWLEDGE OF ALL THE RELEVANT FACTS GATHERED BY

BOTH PARTIES IS ESSENTIAL TO PROPER LITIGATION." HICKMAN V TAYLOR, 1967, 329 U.S. 495, 507, 67 S.Ct. 385, 392.

"IN THE PROBLEM OF [EMPLOYMENT] DISCRIMINATION, STATISTICS OFTEN TELL MUCH, AND COURTS LISTEN." ALABAMA V UNITED STATES, 304 F.2D 583, 588, CA 5 1962, AFF'D PER CURIAM 1962, 371 U.S. 37, 83 S.Ct. 145. SEE ALSO UNITED STATES V MAYES INTERNATIONAL CORPORATION, 456 F.2D 112, 120, CA 5 1972; RODRIGUEZ V EAST TEXAS MOTOR FREIGHT, 505 F.2D 40, 53, CA 5 1974.

THE SUPREME COURT HAS GIVEN CLEAR GUIDELINES ON THE STATISTICS ESSENTIAL TO A JOB-BIAS COMPLAINANT TO ESTABLISH A PRIMA FACIE CASE :

"STATISTICS AS TO [APPELLEE'S] EMPLOYMENT POLICY AND PRACTICE MAY BE HELPFUL TO A DETERMINATION OF WHETHER [APPELLEES] REFUSAL TO [HIRE] [APPELLANT] . . .

CONFORMED TO A GENERAL PATTERN OF
DISCRIMINATION AGAINST [MINORITIES]."

MCDONNELL DOUGLAS CORPORATION V GREEN,
1973, 411 U.S. 792, 805, 93 S.Ct. 1817, 1825.

THE INFORMATION SOUGHT BY THE APPELLANT
THROUGH INTERROGATORIES CALLS FOR THE
STATISTICS AS TO THE APPELLEE'S EMPLOYMENT
POLICY AND PRACTICE. FAR FROM BEING
BURDENSOME AND OPPRESSIVE, THE INTERROGATORIES
ARE ENTIRELY "RELEVANT TO THE SUBJECT MATTER
INVOLVED IN THE PENDING ACTION", AND THAT
"THE INFORMATION SOUGHT APPEARS REASONABLY
CALCULATED TO LEAD TO THE DISCOVERY OF
ADMISSIBLE EVIDENCE." RULE 26(b)(1), F.R.CIV.P.
SEE ALSO TABATCHNIK V C.D. SEARLE & COMPANY,
67 F.R.D. 49, 54, DC NJ 1975; UNITED STATES
V IBM CORPORATION, 66 F.R.D. 215, 218, SD NY
1974; SAYRE V ABRAHAM LINCOLN FEDERAL
SAVINGS & LOAN ASSOCIATION, 65 F.R.D. 379, 382,
ED PA 1974; LA ZHEMISE LACOSTE V ALLIGATOR

COMPANY, 60 F.R.D. 164, 171, DA DE 1973; SOUTHERN RAILWAY COMPANY V LAUNHAM, 403 F.2D 119, 129, CA 5 1968.

SINCE "CIVIL TRIALS IN THE FEDERAL COURTS NO LONGER NEED BE CARRIED ON IN THE DARK," HICKMAN V TAYLOR, 1942, 329 U.S. 495, 501, 67 S.Ct. 385, 389, THE SUPREME COURT MANDATED THAT "ON . . . [TRIAL] [APPELLANT] MUST BE GIVEN A FULL AND FAIR OPPORTUNITY TO DEMONSTRATE BY COMPETENT EVIDENCE THAT THE PRESUMPTIVELY VALID REASONS FOR HIS REJECTION WERE IN FACT A COVERUP FOR A . . . DISCRIMINATORY DECISION." McDONNELL DOUGLAS CORPORATION V GREEN. 1973, 411 U.S. 792, 805, 93 S.Ct. 1817, 1826.

COURT SHOULD BEAR IN MIND THAT "THE NEED TO DEVELOP ALL RELEVANT FACTS IN THE ADVERSARY SYSTEM IS BOTH FUNDAMENTAL AND COMPREHENSIVE." UNITED STATES V NIXON, 1974, 418 U.S. 683, 709, 94 S.Ct. 3090, 3108.

MOREOVER, "THE EXPERIENCE OF THE FEDERAL

COURTS OVER THE LAST TWO DECADES HAS BEEN THAT . . . DISCRIMINATION IN EMPLOYMENT . . . IS OFTEN SUBTLE AND NOT EASILY PROVED. THE CONSEQUENCES OF SUCH DISCRIMINATION ARE MOST GRAVE, BOTH FOR THE INDIVIDUAL VICTIM AND FOR SOCIETY AT LARGE." BOOTH V PRINCE GEORGE COUNTY, MARYLAND, 66 F.R.D. 466, 473, DC MD 1975.

THEREFORE, THE NECESSITY FOR LIBERAL DISCOVERY TO CLARIFY THE COMPLEX ISSUES ENCOUNTERED IN LITIGATION SEEKING TO REDRESS EMPLOYMENT DISCRIMINATION HAS BEEN WIDELY RECOGNIZED. BURNS V THICKOL CHEMICAL CORPORATION, 483 F.2D 300, CA 5 1973.

IT IS A WELL ESTABLISHED DOCTRINE THAT THE SCOPE AND CONDUCT OF DISCOVERY ARE WITHIN THE SOUND DISCRETION OF THE TRIAL JUDGE. BAKER V F&F INVESTMENT, 470 F.2D 778, 781, CA 2 1972, CERT. DEN. 1973, 411 U.S. 966, 93 S.Ct. 2147, 36 L.Ed. 2d 686; MONTECATINI EDISON S.P.A. V E.I. DU PONT DE NEMOURS & COMPANY, 436 F.2D

70, 72, CA 3 1970; SOUTHERN RAILWAY COMPANY
V LANHAM, 403 F.2D 119, 126, CA 5 1968; BANK
OF AMERICA NATIONAL TRUST AND SAVINGS
ASSOCIATION V HAYDEN, 231 F.2D 595, 606, CA 9
1956; ATLANTIC GREYHOUND CORPORATION V
LAURITZEN, 182 F.2D 540, 542, CA 6 1950; CARTER
V BALTIMORE & O.R. COMPANY, 152 F.2D 129, 130-1,
CA DC 1945.

"BUT THE JUDGE'S DISCOVERY RULINGS,
LIKE HIS OTHER PROCEDURAL DETERMINATIONS,
ARE NOT ENTIRELY SACROSANCT. IF HE FAILS
TO ADHERE TO THE LIBERAL SPIRIT OF THE RULES,
[THE APPELLATE COURT] MUST REVERSE." BURNS
V THIOKOL CHEMICAL CORPORATION, 483 F.2D 300,
305, CA 5 1973.

THE COURT SHOULD EVER BE MINDFUL THAT
"THE VERY INTEGRITY OF THE JUDICIAL SYSTEM
AND PUBLIC CONFIDENCE IN THE SYSTEM
DEPEND ON FULL DISCLOSURE OF ALL THE
FACTS, WITHIN THE FRAMEWORK OF THE RULES

OF EVIDENCE." UNITED STATES V NIXON, 1974,
418 U.S. 683, 709. 96 S.Ct. 3090, 3108.

AS SUCH IT IS APPARENT THAT THE COURT
BELOW ABUSED ITS DISCRETION IN DENYING
THE APPELLANT HIS MOTION TO COMPEL THE
APPELLEE TO ANSWER CERTAIN INTERROGATORIES,
AND THAT THE SAID DECISION SHOULD BE
REVERSED.

POINT II

ATTORNEYS' FEES ARE USUALLY
AWARDED TO PRIVATE ATTORNEYS
GENERAL WHO VINDICATE A POLICY
THAT CONGRESS CONSIDERED OF THE
HIGHEST PRIORITY AND NOT TO A
CORPORATE DEFENDANT WHO IS
VIOLATING THE LAW OF THE LAND

"IN THE UNITED STATES, THE PREVAILING LITIGANT IS ORDINARILY NOT ENTITLED TO COLLECT A REASONABLE ATTORNEYS' FEE FROM THE LOSER." ALYESKA PIPELINE SERVICE COMPANY V WILDERNESS SOCIETY, 1975, 421 U.S. 240, 247, 95 S.Ct. 1612, 1616.

"IN SUPPORT OF THE AMERICAN RULE, IT HAS BEEN ARGUED THAT SINCE LITIGATION IS AT BEST UNCERTAIN ONE SHOULD NOT BE PENALIZED FOR MERELY DEFENDING OR PROSECUTING A LAWSUIT, AND THAT THE POOR MIGHT BE UNJUSTLY DISCOURAGED

FROM INSTITUTING ACTIONS TO VINDICATE
THEIR RIGHTS IF THE PENALTY FOR LOSING
INCLUDED THE FEES OF THEIR OPPONENTS'
COUNSEL." FLEISCHMANN DISTILLING CORPORATION
V MAIER BREWING COMPANY, 1967, 386 U.S. 714,
718, 87 S.Ct. 1404, 1407.

"WHAT CONGRESS HAS DONE, HOWEVER,
WHILE FULLY RECOGNIZING AND ACCEPTING
THE GENERAL RULE, IS ITSELF TO MAKE
SPECIFIC AND EXPLICIT PROVISIONS FOR THE
ALLOWANCE OF ATTORNEYS' FEES UNDER
SELECTED STATUTES GRANTING OR PROTECTING
VARIOUS FEDERAL RIGHTS." ALYESKA PIPELINE
SERVICE COMPANY V WILDERNESS SOCIETY,
1975, 421 U.S. 240, 260, 95 S.Ct. 1612, 1623.

"IT IS TRUE THAT UNDER SOME, IF NOT
MOST, OF THE STATUTES PROVIDING FOR THE
OF
ALLOWANCE, REASONABLE FEES, CONGRESS HAS
OPTED TO RELY HEAVILY ON PRIVATE
ENFORCEMENT TO IMPLEMENT PUBLIC POLICY

AND TO ALLOW COUNSEL FEES SO AS TO ENCOURAGE LITIGATION." ID., 421 U.S. at 263, 95 S.Ct. at 1624.

"THE AMERICAN RULE HAS NOT SERVED, HOWEVER, AS AN ABSOLUTE BAR TO THE SHIFTING OF ATTORNEYS' FEES EVEN IN THE ABSENCE OF STATUTE OR CONTRACT." F.D. RICH COMPANY V INDUSTRIAL LUMBER COMPANY, 1974, 417 U.S. 116, 129, 94 S.Ct. 2157, 2165.

THEREFORE, IT WOULD BE WITHIN THE POWER OF A COURT OF EQUITY TO DIRECT PAYMENT OF AN OPPONENT'S ATTORNEY'S FEES IF REQUIRED BY "DOMINATING REASONS OF JUSTICE." SPRAGUE V TICONIC NATIONAL BANK, 1939, 307 U.S. 161, 167, 59 S.Ct. 777, 780; UNIVERSAL OIL PRODUCTS COMPANY V ROOT REFINING COMPANY, 1946, 328 U.S. 575, 580, 66 S.Ct. 1176, 1179.

"EQUITY ESCHews MECHANICAL RULES . . . [AND] DEPENDS ON FLEXIBILITY." HOLMBERG V ARMBRECHT, 1946, 327 U.S. 392, 396, 66 S.Ct. 582, 584. AS SUCH THE POWER TO AWARD ATTORNEYS' FEES

"IS PART OF THE ORIGINAL AUTHORITY OF THE CHANCELLOR TO DO EQUITY IN A PARTICULAR SITUATION," SPRAGUE V TIBONIC NATIONAL BANK, 1939, 307 U.S. 181, 186, 59 S.Ct. 777, 780, AND FEDERAL COURTS DO NOT HESITATE TO EXERCISE THIS INHERENT EQUITABLE POWER WHENEVER "OVERRIDING CONSIDERATIONS INDICATE THE NEED FOR SUCH A RECOVERY." MILLS V ELECTRIC AUTO-LITE COMPANY, 1970, 396 U.S. 375, 391-2, 90 S.Ct. 616, 625.

THE SUPREME COURT, IN C.D. RICH COMPANY V INDUSTRIAL LUMBER COMPANY, 1974, 417 U.S. 116, 129-30, 94 S.Ct. 2157, 2165, SETS FORTH THREE GENERAL CATEGORIES OF SITUATIONS WHEN THE EQUITABLE POWER TO AWARD ATTORNEYS' FEES IS GENERALLY CONSIDERED :

1. WHERE THERE HAS BEEN BAD FAITH, VEXATION, OR OPPRESSION. IN THIS CLASS OF CASES, THE PUNITIVE ASPECTS PREDOMINATE.
E.G. UNIVERSAL OIL PRODUCTS COMPANY V ROOT

REFINING COMPANY, *outaa* ; NEWMAN V PIGGIE
PARK ENTERPRISES, *infa*.

2. WHERE A COMMON FUND HAS BEEN
CREATED, OR CLOSELY ANALOGOUS TO THIS,
WHERE A DEFINABLE CLASS BENEFITS FROM THE
LITIGATION AND AN AWARD ENABLES THE
COURT TO SPREAD THE EXPENSE AMONG ALL
WHO BENEFIT. E.G. SPRAGUE V TIRONIE NATIONAL
BANK, *outaa* ; MILLS V ELECTRIC AUTO-LITE
COMPANY, *outaa*.

3. WHERE THE PRIVATE ATTORNEY GENERAL
THEORY MAY HAVE APPLICATION — THAT IS,
WHERE THE LITIGATION WAS INSTITUTED TO
VINDICATE A POLICY GRANTED A HIGH PRIORITY
BY A CONGRESSIONAL ACTION. E.G. NORTHCROSS
V MEMPHIS BOARD OF EDUCATION, *infa* ; BRADLEY
V SCHOOL BOARD OF CITY OF RICHMOND, *infa*.

IN THE INSTANT ACTION, THE CRITERIA
CITED ABOVE FOR AWARDED COUNSEL FEES
DO NOT LEAN IN FAVOR OF THE DEFENDANT.

ON THE CONTRARY, THEY CLEARLY GO IN FAVOR OF THE PLAINTIFF.

IF WELL-KNOWN STATUTORY GUARANTEES CONTINUE TO BE IGNORED OR ABRIDGED, AND INDIVIDUAL VICTIMS OF DISCRIMINATION ARE FORCED TO RESORT TO THE COURTS FOR PROTECTION, IT WOULD BE NECESSARY FOR ADDITIONAL SANCTION OF SUBSTANTIAL ATTORNEYS' FEES TO BE AWARDED BY THE COURTS. THE TIME HAS COME WHEN RECALCITRANT EMPLOYERS CAN FORCE UNWILLING VICTIMS OF DISCRIMINATION TO BEAR THE CONSTANT AND CRUSHING EXPENSE OF ENFORCING THEIR STATUTORILY ACCORDED RIGHTS. THE FULFILLMENT OF STATUTORY GUARANTEES WHICH ALTER A KEY SOCIAL INSTITUTION, AND CAUSES REPERCUSSIONS THROUGHOUT THE COMMUNITY, IS NOT A PRIVATE MATTER. UNDER THE CIVIL RIGHTS ACTS, COURTS ARE REQUIRED FULLY TO REMEDY AN ESTABLISHED WRONG. AND THE PAYMENT OF FEES AND

EXPENSES IS A NECESSARY INGREDIENT OF SUCH A REMEDY.

CONSEQUENTLY, THE SUCCESSFUL PLAINTIFF IN A JOB-BIAS ACTION "SHOULD ORDINARILY RECOVER AN ATTORNEY'S FEE UNLESS SPECIAL CIRCUMSTANCES WOULD RENDER SUCH AN AWARD UNJUST." NEWMAN V PIGGIE PARK ENTERPRISES, 1968, 390 U.S. 400, 402. 88 S.Ct. 964, 966; NORTHCROSS V MEMPHIS BOARD OF EDUCATION, 1973, 412 U.S. 427, 428, 93 S.Ct. 2201, 2202. SEE ALSO EVANS V SHERATON PARK HOTEL, 503 F.2d 177, 186, CA DC 1974; JOHNSON V GEORGIA HIGHWAY EXPRESS, 488 F.2d 714, 716, CA 5 1974; SCHAEFFER V SAN DIEGO YELLOW CABS, 462 F.2d 1002, 1008, CA 9 1972; PARHAM V SOUTHWESTERN BELL TELEPHONE COMPANY, 433 F.2d 421, 430, CA 8 1970.

OTHERWISE, "IF FORCED TO BEAR THE BURDEN OF ATTORNEYS' FEES, FEW AGGRIEVED PERSONS WOULD BE IN A POSITION TO SECURE THEIR AND THE PUBLIC'S INTEREST IN [ENFORCING

IMPORTANT PUBLIC POLICIES]". BRADLEY V SCHOOL BOARD OF CITY OF RICHMOND, 1974. 416 U.S. 696, 708, 74 S.Ct. 2006, 2014.

THE APPELLANT IS NOT AWARE OF A SINGLE INSTANCE WHERE A TRIAL COURT HAS AWARDED ATTORNEY'S FEE TO A CORPORATE DEFENDANT, WHERE THE DEFENDANT'S OBSTINATE, ADAMANT, AND OPEN RESISTANT TO THE LAW HAVE FORCED THE PLAINTIFF TO RESORT TO COURT FOR PROTECTION.

MOREOVER, "A ROUTINE ALLOWANCE OF ATTORNEY FEES TO SUCCESSFUL DEFENDANTS IN DISCRIMINATION SUITS MIGHT EFFECTIVELY DISCOURAGE SUITS IN ALL BUT THE CLEARER CASES, AND INHIBIT EARNEST ADVOCACY ON UNDECIDED ISSUES." US STEEL CORPORATION V UNITED STATES, 519 F.2D 359, 364-5, CA 3 1975.

AS SUCH IT IS APPARENT THAT THE COURT BELOW ABUSED ITS DISCRETION IN AWARDING ATTORNEY'S FEE TO THE APPELLEE, AND THAT THE SAID DECISION SHOULD BE REVERSED.

POINT III DISMISSAL OF THE COMPLAINT FOR
LACK OF PROSECUTION THE DAY
AFTER DENYING THE PLAINTIFF'S
DISCOVERY MOTION IS NOTHING BUT
JUDICIAL USURPATION AND OPPRESSION
AND CAN NEVER BE UPHOLD WHERE
JUSTICE IS JUSTLY ADMINISTERED

IT IS WELL-ESTABLISHED THAT, UNDER
RULE 41(b) OF THE FEDERAL RULES OF CIVIL
PROCEDURE, THE TRIAL COURT HAS THE
DISCRETION TO DISMISS A COMPLAINT, WITH
PREJUDICE, FOR FAILURE TO PROSECUTE. LINK
V WABASH RAILROAD COMPANY, 1962, 370 U.S.
626, 629, 82 S.Ct. 1386, 1388; FLAKSA V LITTLE
RIVER MARINE CONSTRUCTION COMPANY, 389
F.2d 885, CA 5 1968, CERT. DEN. 1968, 392
U.S. 928, 88 S.Ct. 2287; VINDIGNI V MEYER,
441 F.2d 376, CA 2 1971.

BUT DISMISSAL IS A HARSH SANCTION,

AND SHOULD BE RESORTED TO ONLY IN EXTREME SITUATIONS. NAVARRO V CHIEF OF POLICE, DES MOINES, IOWA, 523 F.2D 214, 217, CA 8 1975; SEARVER V ALLEN, 457 F.2D 308, 310, CA 7 1972; RICHMAN V GENERAL MOTORS CORPORATION, 437 F.2D 196, 199, CA 1 1971; MEEKER V RIZLEY, 324 F.2D 269, 272, CA 10 1963.

COURTS INTERPRETING THE RULE UNIFORMLY HOLD THAT IT CANNOT BE AUTOMATICALLY OR MECHANICALLY APPLIED. AGAINST THE POWER TO PREVENT DELAYS MUST BE WEIGHED THE SOUND PUBLIC POLICY OF DECIDING CASES ON THEIR MERITS. DYOTHERM CORPORATION V TURBO MACHINE COMPANY, 392 F.2D 146, 149, CA 3 1968; DAVIS V OPERATION AMIGO, 378 F.2D 101, 103, CA 10 1967; COUNCIL OF FEDERATED ORGANIZATIONS V MIZE, 339 F.2D 898, 901, CA 5 1964.

CONSEQUENTLY, DISMISSAL "MUST BE TEMPERED BY A CAREFUL EXERCISE OF

JUDICIAL DISCRETION." DORGIN V GRAHAM,
372 F.2D 130,131, CA 5 1967.

WHILE THE PROPRIETY OF DISMISSAL
ULTIMATELY TURNS ON THE FACTS OF EACH
CASE, CRITERIA FOR JUDGING WHETHER THE
DISCRETION OF THE TRIAL COURT HAS BEEN
SOUNDLY EXERCISED HAVE BEEN STATED
FREQUENTLY. CONNOLLY V PAPACHRISTID
SHIPPING LIMITED, 504 F.2D 917,920, CA 5
1974; BUSH V UNITED STATES POSTAL SERVICE,
496 F.2D 42,44, CA 6 1974.

IT HAS BEEN OBSERVED THAT WHILE
DISMISSAL IS A DISCRETIONARY MATTER,
THE DECIDED CASES "HAVE GENERALLY
PERMITTED IT ONLY IN THE FACE OF A CLEAR
RECORD OF DELAY OR CONTUMACIOUS CONDUCT
BY THE PLAINTIFF." DURHAM V FLORIDA
EAST COAST RAILWAY COMPANY, 385 F.2D 366,
368, CA 5 1967.

THE APPELLATE COURTS FREQUENTLY HAVE

FOUND ABUSE OF DISCRETION WHEN TRIAL COURTS FAILED TO APPLY SANCTIONS LESS SEVERE THAN DISMISSAL. REIZAKIS V LOY, 490 F.2D 1132, 2A 4 1974; POND V BRANIFF AIRWAYS, 453 F.2D 367, 2A 5 1972; RICHMAN V GENERAL MOTORS CORPORATION, 437 F.2D 196, 2A 1 1971; BROWN V THOMPSON, 430 F.2D 1214, 2A 5 1970.

ALSO, LACK OF PREJUDICE TO THE DEFENDANT, THOUGH NOT A BAR TO DISMISSAL, IS A FACTOR THAT SHOULD BE CONSIDERED IN DETERMINING WHETHER THE TRIAL COURT EXERCISED SOUND DISCRETION. BROWN V O'LEARY, 512 F.2D 485, 486, 2A 5 1975; BUSH V UNITED STATES POSTAL SERVICE, 496 F.2D 42, 44, 2A 4 1974.

IF THE FACTS DO DEPICT THAT THE PLAINTIFF "HAD BEEN DELIBERATELY PROCEEDING IN DILATORY FASHION." LINK V WABASH RAILROAD COMPANY, 1962, 370 U.S. 626, 633, 82 S.Ct. 1386, 1390.

THE DELAY "WOULD CERTAINLY HAVE JUSTIFIED THE COURT IN DISMISSING THE ACTION ON ITS OWN MOTION." REDFIELD V YSTALYFERA IRON COMPANY, 1884. 110 U.S. 174, 176. 3 S.Ct. 570, 572.

IN THE INSTANT ACTION, THE PLAINTIFF-APPELLANT HAS BEEN VIGOROUSLY PROSECUTING HIS ACTION THROUGHOUT. ON JUNE 13, 1935, THE TRIAL COURT DENIED THE APPELLANT'S MOTION TO COMPEL THE DEFENDANT-APPELLEE TO ANSWER CERTAIN INTERROGATORIES. IMMEDIATELY THEREAFTER THE APPELLANT MADE A MOTION, RETURNABLE JULY 11, 1935, FOR A REARGUMENT OF THE SAID MOTION. THE TRIAL COURT DECIDED THE SAID MOTION ON FEBRUARY 9, 1936, AND THE FOLLOWING DAY DISMISSED THE ACTION FOR LACK OF PROSECUTION.

THIS UTTERLY ARBITRARY, CAPRICIOUS, AND WHIMSICAL ACTION OF THE TRIAL JUDGE IS NOTHING BUT "JUDICIAL USURPATION AND OPPRESSION, AND CAN NEVER BE UPHELD

WHERE JUSTICE IS JUSTLY ADMINISTERED."

CALPIN V PAGE, 1873, 85 U.S. (18 WALL) 350, 369.

THE JUDGE SHOULD BEAR IN MIND THAT
"THE FUNDAMENTAL CONCEPTION OF A COURT OF
JUSTICE IS CONDEMNATION ONLY AFTER HEARING.
TO SAY THAT COURTS HAVE INHERENT POWER
TO DENY ALL RIGHT TO [PROSECUTE] AN ACTION,
AND TO RENDER DECREES WITHOUT ANY HEARING
WHATEVER, IS, IN THE VERY NATURE OF
THINGS, TO CONVERT THE COURT EXERCISING
SUCH AN AUTHORITY INTO AN INSTRUMENT OF
WRONG AND OPPRESSION, AND HENCE TO STRIP
IT OF THAT ATTRIBUTE OF JUSTICE UPON WHICH
THE EXERCISE OF JUDICIAL POWER NECESSARILY
DEPENDS." HOVEY V ELLIOTT, 1897, 167 U.S.
409, 413-4, 17 S.Ct. 841, 843.

"IF SUCH AUTHORITY [TO DISMISS AN ACTION]
EXISTS, THEN, IN CONSEQUENCE OF THEIR
ESTABLISHMENT, TO COMPEL OBEDIENCE TO LAW,
AND TO ENFORCE JUSTICE, COURTS POSSESS

THE RIGHT TO INFLICT THE VERY WRONGS WHICH THEY WERE CREATED TO PREVENT." 10., 167 U.S. at 418, 17 S.Ct. at 844.

MOREOVER, "THERE ARE CONSTITUTIONAL LIMITATIONS UPON THE POWER OF COURTS, EVEN IN AID OF THEIR OWN VALID PROGRESSES, TO DISMISS AN ACTION WITHOUT AFFORDING A PARTY THE OPPORTUNITY FOR A HEARING ON THE MERITS OF HIS CAUSE." SOCIETE INTERNATIONALE V ROGERS, 1958, 357 U.S. 197, 209, 78 S.Ct. 1087, 1094.

SUCH ADMINISTRATION OF INJUSTICE "WOULD CONVERT THE JUDICIAL DEPARTMENT OF THE GOVERNMENT INTO AN ENGINE OF OPPRESSION, AND WOULD MAKE IT DESTROY GREAT CONSTITUTIONAL SAFEGUARDS." HOUVEY V ELLIOTT, 1897, 167 U.S. 409, 419, 17 S.Ct. 841, 845.

THE COURT SHOULD EVER BE MINDFUL THAT THE "RULES OF PRACTICE AND PROCEDURE ARE DEVISED TO PROMOTE THE ENDS OF JUSTICE,

NOT TO DEFEAT THEM." HORNEL V HELVERING, 1941. 312 U.S. 552, 557, 61 S.Ct. 719, 721.

INDEED, THE VERY FIRST RULE OF THE FEDERAL RULES OF CIVIL PROCEDURE DIRECTS THE COURTS TO CONSTRUCT THOSE RULES "TO SECURE THE JUST, SPEEDY, AND INEXPENSIVE DETERMINATION OF EVERY ACTION."

"IF RULES OF PROCEDURE WORK AS THEY SHOULD IN AN HONEST AND FAIR JUDICIAL SYSTEM, THEY NOT ONLY PERMIT, BUT SHOULD AS NEARLY AS POSSIBLE GUARANTEE THAT BONA FIDE COMPLAINTS BE CARRIED TO AN ADJUDICATION ON THE MERITS." SUDOWITZ V HILTON HOTELS CORPORATION, 1966, 383 U.S. 363, 373, 86 S.Ct. 845, 851.

IT IS UNIVERSALLY RECOGNIZED THAT "WHETHER IN NAME OR NOT, THE SUIT IS PERFORCE A SORT OF CLASS ACTION FOR FELLOW [PERSONS] SIMILARLY SITUATED." JENKINS V UNITED GAS CORPORATION, 400 F.2D 28, 33, CA 5 1968.

THEREFORE, "THE TRIAL COURT BEARS A SPECIAL RESPONSIBILITY IN THE PUBLIC INTEREST TO RESOLVE THE DISPUTE BY DETERMINING THE FACTS REGARDLESS OF THE POSITION OF THE INDIVIDUAL PLAINTIFF." *BOWE V COLGATE-PALMOLIVE COMPANY*, 416 F.2D 711, 715, 2d 7 1969.

"CONGRESS, IN ENACTING TITLE VII, THOUGHT IT NECESSARY TO PROVIDE A JUDICIAL FORUM FOR THE ULTIMATE RESOLUTION OF DISCRIMINATORY EMPLOYMENT CLAIMS. IT IS THE DUTY OF COURTS TO ASSURE THE FULL AVAILABILITY OF THIS FORUM." *ALEXANDER V GARDNER-DENVER COMPANY*, 1974, 415 U.S. 36, 60, 94 S.Ct. 1011, 1025.

AS SUCH IT IS APPARENT THAT THE COURT BELOW ABUSED ITS DISCRETION IN DISMISSING THE COMPLAINT FOR LACK OF PROSECUTION WHILE THE APPELLANT HAS BEEN PROSECUTING IT VIGOROUSLY, AND THAT THE SAID DECISION SHOULD BE REVERSED.

CONCLUSION

THE JUDGMENT APPEALED FROM SHOULD
IN ALL RESPECTS BE REVERSED.

RESPECTFULLY SUBMITTED,

Biswanath Halder
Appellant Pro Se

BISWANATH HALDER
173-17 65 AVENUE
FRESH MEADOWS, NY 11365
TELEPHONE : 212-539-2305

DATED : Queens, New York
June 4, 1976

LONDON TIMES

SCANTLIN ELECTRONICS, INC.

LOS ANGELES, CALIFORNIA

DESIGNERS AND MANUFACTURERS OF
WORLD-WIDE ON-LINE
COMPUTER/COMMUNICATION SYSTEMS

have several situations vacant in Los Angeles for

Digital Logical Designers
On-line (on-demand) System Programmers
Electronic Engineers 2101 GP

Only the most talented need apply since salaries range from £5,000 to £10,000 p.a. Kindly submit a résumé of your education and experience to the undersigned immediately by air post. Candidates will be contacted by telephone to arrange an interview in London during the week of February 10-14.

Address correspondence to:

Scantlin Electronics, Inc.,
815-A Moraga Drive,
Los Angeles, California 90049, U.S.A.

JANUARY 19, 1969

EXHIBIT "A"



SCANTLIN ELECTRONICS, INC.

815 MORAGA DRIVE, LOS ANGELES, CALIF. 90049 (213) 476-6211

ADVANCED
DEVELOPMENT
GROUP

January 28, 1969

Mr. B. Halder
7 Horsecroft Road
Hemel Hempstead, Herts.
ENGLAND

Dear Mr. Halder:

Thank you for your response to our recent advertisement. The positions which are currently open are specialized in nature. While we are impressed with your qualifications, it appears that they are not sufficiently related to our rather narrow requirements.

Should you have occasion to be in the United States at a later date, please contact us as our requirements do change.

Again, thank you for writing us.

Very truly yours,

John R. Scantlin
Director of Research

EXHIBIT "B"

Copy Received
Strassburg + Strassburg
by Lawrence Fechner

6/7/76

4:10 PM

74C 1376

BISWANATH HALDER VS. QUOTRON SYSTEMS, INC.

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
9/25/74	By MISHLER, Ch. J. - Order dated Sept. 12, 1974 filed that this case is to be filed in forma pauperis.	1	
9/25/74	Complaint filed. Summons issued.	2	JS5
10-31-74	Summons returned and filed/executed.	3	
11/7/74	ANSWER of Quotron Systems, Inc. filed.	4	
11/7/74	Notice to take deposition and requests to produce documents filed.	5	
12/18/74	Notice of Motion, ret. 1/17/75 filed re: granting the		
	pltff leave to amend its complaint, etc.	6	
12/18/74	Complaint and "Pltff's" motion for other relief filed.	7	
1-3-75	Affidavit in opposition with Deft's (memorandum of law) in — 9 opposition of pltff's motion to amend the complaint filed.	8/9	
1/17/75	Before MISHLERCH. J. - Case called - Motion argued - Pltff's motion for leave to amend, etc. - Decision reserved.		
2-6-75	Interrogatories filed.	10	
2-14-75	Deposition of pltff dtd 11-25-74 filed. (p/c)	11	
2-24-75	By MISHLER, Ch. J. - Memorandum of Decision and Order dtd 2-24-75 granting leave to amend the complaint filed. (p/c	12	
3-7-75	Deft's answer to interrogatories filed.	13	
3-17-75	ANSWER filed.	14	
4-8-75	Notice of motion to compel deft to answer interrogatories, ret 4-18-75 at 10 A.M filed.	15	
4-15-75	Affirmation of Lawrence Fechner filed.	16	
4-15-75	Deft's memorandum of law in opposition to pltff's motion to compel answers to interrogatories filed.	17	
4-18-75	Before MISHLER, Ch. J. - Case called for hearing on pltff's motion compelling deft to answer interrogatories. Motion argued. Decision reserved.		
4-23-75	Affidavit of Biswanath Halder in support of his motion to compel deft to answer interrogatories filed.	18	
6/6/75	Notice of Motion, ret. 6/20/75 filed re: to amend complaint	19	
6-16-75	By MISHLER, Ch. J. - Memorandum of Decision and Order dtd 6-16-75 denying pltff's motion to compel deft to answer certain interrogatories filed. (p/c mailed to attys)	20	
6-17-75	Letter from Lawrence Fechner dtd 6-17-75 filed.	21	
6-20-75	Before MISHLER, Ch. J. - Pltff's motion re amending his com- plaint filed.		

Continued

BEST COPY AVAILABLE

DATE	PROCEEDINGS	
6-23-75	By MISHLER, CH. J. - Memorandum of Decision and Order dtd 6-23-75 granting pltff's motion to amend his complaint filed. (m/c)	22
6-24-75	Notice of motion ret 7-11-75 for an order permitting plttf to reargue motion to compel deft to answer interrogatories filed with (Memorandum of Law.) 24	23/24
6-26-75	Affidavit of service filed.	25
7-7-75	Affirmation of Lawrence Fechner in opposition to plttf's motion to reargue motion to compel answers to all interr. filed.	26
9-3-75	Complaint & motion for other relief filed.	27
9-11-75	Request to enter default filed.	28
9-11-75	Default of deft Quotron Systems Inc. noted on doc. #28.	--
9-26-75	Notice of motion 10-10-75 for an order pursuant to Rule 55 filed. (b)	29
9/30/75	ANSWER of Quotron Systems, Inc. filed.	30
10/9/75	Affidavit of Lawrence Fechner filed.	31
10/10/75	Before MISHLER, CH. J. - Case called - Motion argued - Motion for default judgment by the plttf is denied.	
2-9-76	Copy of letter dtd 2-5-76 from CH. J. Mishler filed re setting date for trial: Feb. 10, 1976 at 10 AM.	32
2-10-76	By MISHLER, CH. J. - Memorandum Decision & Order dtd 2-9-76 denying plttf's motion to reargue the court's decision of 6-12-75 filed. (p/c)	33
2-10-76	Before MISHLER, CH. J. - Case called - PLNTFF not ready for trial, deft ready. Trial ordered & begun - non jury. For failure of the plttf to proceed to trial the complaint as to the deft, Quotron Systems, Inc., is dismissed. Clerk to enter judgment in favor of the deft and against the plttf dismissing the complaint. Trial concluded. Hearing held as to attorney's fees. (Quotron - 74C1376). Mr. Strassberg for Quotron sworn to testify in the hearing. The Court awarded \$500.00 atty fees to the deft. Quotron - Hearing concluded.	
2-10-76	Before MISHLER, CH. J. - Case called. Plttf not ready for trial. Defts ready. Trial ordered & begun (non-jury). For failure of the plttf to proceed to trial the complaint is dismissed as to defts Sperry Rand Corp, Quotron Systems, Inc. & Information Inc. Clerk to enter judgment in favor of the defts & against the plttf dismissing the complaint. Trial concluded. Hearing held on attys fees. Mr. Strassberg for Quotron sworn to testify in the	

SYSTEMS, INC.

35

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----X
5 HALDER : 74 C 1069
6 Plaintiff : 74 C 1376
7 against : 74 C 1377
8 SPERRY RAND ET AL. : 74 C 1531
9 Defendants : 74 C 1532
: 74 C 1552
: 75 C 925
: 75 C 1761
10 -----X

11
12 United States Courthouse
13 Brooklyn, New York

14 February 10, 1976
10:00 a.m.

15 B e f o r e:

16 HONORABLE JACOB MISHLER,

17 Ch. U.S.D.J.
18
19
20
21
22

23 SHELDON SILVERMAN
24 Official Court Reporter
25

1
2 oriented to do the job for us.

3 MR. STRASSBERG: No further questions.

4 THE COURT: For the failure and refusal of
5 the plaintiff to proceed, the complaints are dis-
6 missed in Halder against Sperry Rand Corp., Halder
7 against Quotron Systems, Inc., and Halder against
8 Informatics, Inc. The clerk is directed to enter
9 judgment in favor of the defendants and against the
10 plaintiff dismissing the complaints.

11 I hope, gentlemen, that in the other actions,
12 as I indicated, the pretrial discovery be as com-
13 plete as you can possibly make it, keeping in mind
14 that this plaintiff is proceeding pro se. As soon
15 as all the proceedings have been completed, I will
16 set it down for a trial, consolidated trial. I tell
17 you, Mr. Halder, that I suggest you do everything in
18 your power to get ready. This Court will not coun-
19 tenance delay, whether it's pro se or by attorney.
20 We have a certain amount of understanding for the
21 limitations of a layman who comes in pro se. You're
22 not just the ordinary layman who comes in. You've
23 carefully studied the statute, carefully studied the
24 procedures.

25 I find that your refusal to proceed today was